





PATENT

IN THE UNITED	) STATES PATENT AN	D TRADEMARI	C OFFICE	10	
	1	Jacket No-	ORCH DIAZ PUS	 280 280	
		Inticipated application	Classification of	***	
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·	F	rior appli	cation:	ب.	
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Assistant Commissioner for Patents Box Patent Application Washington, D.C. 20231

## FILING UNDER 37 CFR 1.53(b)

WARNING:	A c-i-n	(continuation-in-part)	cannot ho	filed under	27 6	FP 1.52.
MANUATINE	A C-I-D	(constangerou-ru-bacs)	cannot oe	illed nuger	31 C	

WARNING: Filing under 37 CFR 1.53 is permitted only if filed by the same or less than

all the inventors named in the prior application.

NARNING: The filing of an application as the United States stage of an International

Application requires an oath or declaration. 37 CFR 1.61(a)(4).

WARNING: The claims of this new application may be finally rejected in the first Office action where all claims of the new application are drawn to the same invention

claimed in the earlier application and would have been properly finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application. MPEP '706.07(b).

This request for filing a

	X	Continuation	Di	ivisional		
pplication under 37	CFR 1.53.	of pending prio	r application :	serial no.	09/321-170	filed on
05/27/99		Roj	ert D. Juncos. (inventor(s			
or <u>Genetic Assay Sy</u> (title of inv	(stem ention)					

## CERTIFICATION UNDER 37 CFR 1.10

Box Patent Application, Washington, D.C.20231.

Kevin 6., Nierz	wa A
(Type or print name of p	eram mailing paper
	1///
(Signature of person ma	illing paper)

NOTE: Each paper or fee filed by "Express Mail" must have the number of mailing label placed thereon prior to mailing. (37 CFR 1.18(b)). NOTE: 37 CFR 1.53 permits the omission of a declaration only if the prior application was complete as set forth in 37 CFR 1.51(a), namely, the prior application comprised at least (1) a specification, including a claim or claims; (2) a declaration; (3) drawings when necessary; and (4) the prescribed filing fee. Accordingly, as presently worded, 37 CFR 1.53 does not permit this procedure to be used where the prior application is pending but only the processing and retention fee required by 37 CFR 1.21(1) is paid or where the declaration was not filed.

1. Copy of Prior Application as Filed Which is Attached

name(s) of enomitiestion

- NOTE: Under 37 CFR 1.53 practice signing and execution of the application by the applicant may be omitted provided the copy is supplied by and accompanied by a statement by the applicant or his or her attorney or agent that the application papers comprise a true copy of the prior application as filed and that no amendments referred to in the declaration filed to complete the prior application introduced new matter therein.
- NOTE: This statement need not be verified if made by an attorney registered to practice before the PTO. (37 CFR 1.53(b)).
  - X I hereby verify that the attached papers are a true copy of what is shown in my records to be the above identified prior application, including the oath or declaration originally filed (37 (FR 1.53)).

The copy of the papers of prior application as filed which are attached are as follows:

РЧ РЧ	igeta, or skectification
pa	age(s) of claims
pag	ge(s) of abstract
	ge(s) of drawing lso complete part & below if drawings are to be transferred)
page	s of declaration and power of attorney

If the copy of the declaration being filed does not show applicant's signature indicate thereon that it was signed and complete the following:

in accordance with the indication required by 37 (FR 53(b) my records reflect that the original signed declaration showing applicant's signature was filed on

the amendment referred to in the declaration filed to complete the prior application and I hereby state, in accordance with the requirements of 37 CFR L.53(b), that this amendment did not introduce new matter therein.

## 2. Amendments

WARNING:

"The claim of a new application may be finally rejected in the first Office action in those situations where (L) the new application is a continuing application of or a substitute for an earlier application and (2) all the claims of the new application (a) are drawn to the same invention claimed in the earlier application and (b) would have been properly finally rejected on the grounds or art of record in the next Office action if they had been entered in the earlier application." MPEP '705.07(b).

- Cancel in this application original claims of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)
- X A preliminary amendment is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application.)
- NOTE: Only amendments reducing the number of claims or adding a reference to the prior application (Rule 1.78(a)) will be entered before calculating the filing fee and granting the filing date. 37 CFR 1.53(b).
- NOTE: "When filing under Rule 1.53 retain at least one original claim from the patent application to assure a complete application." Notice of March 3, 1986 (1064 0.6. 37-38).

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	3. Note:	Where it is	possible that	Prosecution for the	vill give rise to a	first act	tion final		
		for this continuation application and for some reason an amendment cannot be promptly (e·g·, experimental data is being gathered) it may be desirable to petition for suspension of prosecution for the time necessary).							
		(check the next item, if applicable)							
		Nece	ssary to File	nerewith a Petition pplication Filed Co		ution For	The Time		
	4.	Fee Calcula	tion (37 CFR 1.	16)					
			No. Filed	No. Extra	Small Entity Fee	Las	rge Entity Fee		
		sic Fee			\$355		\$710.00		
		etal Claims dep. Claims	15 -20 4 -3	0	x9 = x40 =	x18 = x80 =	\$ 80.00		
		tiple Depende			+135'=	+270 =	\$ 80.00		
					TOTAL		£ \$790.00		
		Fee	for extra claim	ns is not being paid	i at this time. (37	CFR 1.16	(a))		
	NOTE:	cancelled by	y amendment, pri	is are not paid on f or to the expiration fee deficiency: 3	n of the time perio	paid or tod set for	he claims response		
,					Filing Fee Calcul	ation	<u> </u>		
	5.	Small Entity	/ Status						
		has l		e parent applicatio	n and such status i	is still p	roper and		
				Filing Fe	e Calculation (58%	of above	<u> </u>		
	NOTE:	within 2 mon	ths of the date	paid will be refun of timely payment of . 37 CFR 1.28(a).	ded if a verified If a full fee then t	statement the excess	is filed fee paid		
-	NOTE:	must include	a reference to	ce states: "Applica a verified stateme proper and desired.	nt in a parent app				
	6.	Drawings							
	WARNIN	G: Do not ch	eck the followi	ng box if prior cas	e is not to be aba	ndoned.			
		subje accor filir	ect to item 17 be ded this applic ng in the prior	gs from the prior a alow, abandon said p aation. A duplicate application file.	rior application as copy of this reque (Nav only be used	of the fi st is enc if signe	ling date losed for d by (1)		
	•	appli	icant, (2) assi	ignee of record or 1.136 and before p	(3) attorney or	agent o	f record		
	NOTE:	record, mav	also expressly a	agent acting under abandon a prior appl n when filing such	the provisions o	iling dat	) or of e granted		
		Trans	fer the followi cation	ng sheet(s) of drawi	ng from the prior a	pplicatio	n to this		

	, (1)	
NOTE: Trai	ansferred sheets must be cancelled in prior ap	plication. 37 CFR 1-88.
<del></del>	A copy of the amendment cancelling thes application is attached.	e sheets of drawing in the prior
	XNew drawings are enclosed:	
	X_ formal	
	informal	
varning :	DO NOT submit original drawings. A high supplied when filing a patent application to the Office must be on strong, white, so the standards of 'l.&4. If corrections t should be made to the original drawings corrected original drawing then submitted required or desired. Comments on proposed	• The drawings that are submitted mooth, and non-shiny paper and meet o the drawings are necessary, they s and a high-quality copy of the to the Office. Only one copy is

NOTE: "Identifying indicia such as the serial number, group art unit, title of the inventor, attorney's docket number, inventor's name, number of sheets, etc. not to exceed 2-3/4 inches (7.0 cm.) in width may be placed in a centered location between the side edges within three-fourths inch (19.1 mm.) of the top edge. Either this marking technique on the front of the drawing or the placement, although not preferred, of this information and the title of the invention on the back of the drawings is acceptable." Proposed 37 CFR 1.84(1). Notice of March 9, 1988 (1898 0.6.57-62).

7. Priority - 35 U.S.C. 119

9. 1988 (1090 0.G. 57-62).

	_Pri	ority	i			n ser	ial no	. 0		_ is	claimed	unde	filed r 35 U	2.C.	II.	<del>7</del> •
····	The on	cert	ified	сору	has	been	filed	in	prior	. Z · U	applica	ation	serial	no.	a	/
	The	cert	ified	сору	wil	l fol	low.			_						

8. Relate Back - 35 U.S.C. 120

X The enclosed Preliminary Amendment awards the specification to relate back to the parent case.

NOTE: The proper reference to a prior filed PCT application which entered the U.S. national phase is ti

(37 CFR 1.53--page 4 of 8)





## 9. Inventorship Statement

NOTE: If the continuation or divisional application is filed by less than all the inventors named in the prior application a statement must accompany the application when filed requesting deletion of the names of the person or persons who are not inventors of the invention being claimed in the continuation or divisional application. 37 CFR 1.53(b) Temphasis added1.

(complete appropriate items (a) and (b))

(a) With respect to the prior copending U.S. application from which this application claims benefit under 35 USC 120 the inventor(s) in this application is (are):

(complete applicable item below)

	_less than those named in the prior application and it is	requested	that
	following inventor(s) identified above for the prior application be	e deleted:	
	(Type name(s) of inventor(s) to be deleted)		
The in	ventorship for all the claims in this application are:		
X	_the same		
	_not the same, and an explanation, including the owners claims at the time the last claimed invention was made, is submitted.	hip of the	vari
Assign	ment		
X	The prior application is assigned of record to <u>Orchid</u>	Bio\cience	s, In
	_an assignment of the invention to		
	an assignment of the invention to is attached		
,			
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Fee Pa	is attached		
Yee Pa	is attached.	ed by 37 CFI	R 1-16
Уее Ра	whent Being Made At This Time  Not Enclosed  No filing fee is submitted. (This and the surcharge require can	ed by ∃7 CFI	R 1-16
Fee Pa	is attached.  yment Being Made At This Time  Not Enclosed  No filing fee is submitted. (This and the surcharge require can be paid subsequently).		·
Yee Pa	yment Being Made At This Time  Not Enclosed  No filing fee is submitted. (This and the surcharge require can be paid subsequently).  Enclosed		·
Yee Pa	is attached.  yment Being Made At This Time  Not Enclosed  No filing fee is submitted. (This and the surcharge require can be paid subsequently).  Enclosed  basic filing fee		750

Total fees enclosed

this, as well as the changes to 37 CFR 1.53 and 1.78 indicate that in order to obtain the benefit of a prior U.S. application, either the basic filing fee must be paid or else the processing and retention fee of '1.21(1) must be paid within 1 year from

notification under '53(d).

<u> 790.00</u>

12.	Method of Payment of Pees
	Xenclosed is a check in the amount of #790.00
	charge Account No in the amount of * A duplicate of this request is attached.
NOTE:	Fees should be itemized in such a manner that is clear for which purpose the fees are paid. 37 (FR 1.22(b).
13.	Authorization To Charge Additional Fees
WARNIN	G: If no fees are being paid on filing do not complete this item.
WARNIN	iG: Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges if extra claim charges are authorized.
	X The Commissioner is hereby authorized to charge the following additional fees which may be required by this paper and during the entire pendency of the application to Account No. 50-0476 .
	X_37 CFR L.lb(a), (f) or (g) (filing fees)
	X 37 (FR 1.16(b), (c) and (d) (presentation of extra claims)
NOTE:	Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 CFR $1-16(d)$ ) it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.
	37 (FR l.17 (application processing fees)
WARNIN	G: While 37 (FR 1.17(a), (b), (c) and (d) deal with extensions of time under '1.136(a) this authorization should be made only with the knowledge that: "Submission of the appropriate extension fee under 37 (FR 1.136(a) is to no avail <u>unless</u> a request or petition for extension is filed." [emphasis added]. Notice of November 5, 1985 (1860 E.G. 27).
	37 (FR 1.18 (issue fee at or before mailing Notice of Allowance, pursuant to 1.311(b)).
NOTE:	Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the Notice of Allowance. 37 CFR L.3L1(b)).
NOTE:	37 (FR 1.28(b) requires "Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the applicationprior to paying or at the time of payingissue fee." From the wording of 37 (FR 1.28(b): (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.
14.	Power of Attorney
	X The power of attorney in the prior application is to
	Kevin G. Mierzwa 38,049 Attorney Reg. No.
a.	Attorney Reg. No. XThe power appears in the original papers in the prior application.
b.	Since the power does not appear in the original papers, a copy of the power

	CA new power has been executed and is attached.
	dX_Address all future communications to:
	Kevin G. Mierzwa, Esq.
	Artz & Artzy P.C.
	28333 Telegraph Road, Suite 250 Southfield, MI 48034
	(Item d may only be completed by applicant, or attorney or agent of record)
15.	Maintenance of Copendency of Prior Application
(This in the	item must be completed and the papers filed in the prior application if the period se prior application has run)
	A petition, fee and response has been filed to extend the term in the pendin prior application until
NOTE:	The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the papers constituting the filing of the Continuation Application. Notice of November $5_1$ 1985 (1860 0.6. 27).
	A copy of the petition for extension of time in the prior application is attached
16.	Conditional Petition for Extension of Time in Prior Application
(comple	ete this item and file conditional petition in the prior application if previous item plicable)
	a conditional petition for extension of time is being filed in the pending parent application.
NOTE:	The PTO finds it useful if a copy of the petition filed in the prior application extending the term for response is filed with the paper constituting the filing of the continuation application. Notice of November $S_7$ 1985 (1060 0.6. 27).
	A copy of the conditional petition for extension of time in the prior application is attached.
17.	Abandonment of Prior Application (if applicable)
WARNING	4: (Do not complete this item if the application being filed is a divisional of the prior application which is not being abandoned)
NOTE:	"A registered attorney or agent acting under the provisions of '1.34(a), or of record, may also expressly abandon a prior application as of the filing date granted to a continuing application when filing such a continuing application." 37 CFR 1.138.
	Please abandon the prior application at a time while the prior application is pending or when the petition for extension of time or to revive in that application is granted and when this application is granted a filing date so as to make this application copending with said prior application.

I hereby Declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1881 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

4/27/01 Date	Type or print name of person signing  Signature
P-0- Address of Signatory 28333 Telegraph Road Suite 250 Southfield: Michigan 48034	Inventor Assignee of complete interest
Tel. No.: (248) 223-4500 on behalf of Reg. No. 38-049 (if applicable)	Person authorized to sign assignee X Attorney or agent of record
(complete the fol	Filed under Rule 34(a) lowing if applicable)
Orchid BioSciences - Inc- Type name of assignee	
Address of assignee 303 College Road East Princeton, New Jersey 08540	
Title of person authorized to sign on behalf of assignee	
Assignment recorded in PTO on	·